

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

GISELLE RUIZ,
 individually and on behalf of all others
 similarly situated,

 Plaintiff

 v.

 BALLY TOTAL FITNESS HOLDING CORP.,
 a Delaware Corporation, and
 HOLIDAY UNIVERSAL, INC.
 a Delaware Corporation,

 Defendants

Civil Action No.
 05-11052-NMG

**JOINT MOTION TO EXTEND SCHEDULING DEADLINES
BY NINETY DAYS AND CLARIFY SCHEDULING ORDER**

Now come Plaintiff, Giselle Ruiz, and Defendants, Bally Total Fitness Holding Corporation (“Bally”) and Holiday Universal, Inc., and jointly move that this Court extend by ninety days the deadlines in the August 5, 2005 Scheduling Order, docketed August 16, 2005.¹ As grounds, the parties state as follows.

1. This Court (Gorton, J., presiding) at an August 5, 2005 scheduling conference set certain deadlines on the assumption that the Court would rule by the end of September 2005 on the Motion to Stay that Defendants anticipated submitting, and did submit, on August 17, 2005. The Court still has the Motion to Stay under advisement.

2. Under the schedule set August 5, 2005, Defendants' motion to dismiss would be due to be filed on Monday, October 17, 2005. The primary purpose of Defendants' Motion to

Stay was to conserve the parties' and judicial resources by deferring briefing of the Defendants anticipated motion to dismiss until after the Massachusetts Supreme Judicial Court rules in a similar case pending before it on appeal, *Albats v. Town Sport Int'l*, SJC-09432. The Supreme Judicial Court heard oral argument in *Albats* on September 7, 2005, and has the case under advisement.

3. On August 16, 2005, the Clerk's Office issued electronic notice of the scheduling deadlines set at the August 5, 2005 hearing. That notice omitted several of the dates the Court orally had set, including without limitation the deadlines for briefing of Defendants' anticipated motion to dismiss.

4. Accordingly, the parties request that this Court extend the scheduling deadlines set on August 5, 2005 and clarify the electronic scheduling order as follows:

<u>Deadline set 08/05/05</u>	<u>Proposed new deadline</u>	<u>Event</u>
October 15, 2005	January 16, 2006	Motion to Dismiss
October 31, 2005	January 31, 2006	Opposition to Motion to Dismiss
December 1, 2005	March 1, 2006	Discovery begins, class certification
December 15, 2005	March 15, 2006	Automatic disclosures, class Certification
December 31, 2005	April 3, 2006	Amendments and supplements to Pleadings
February 28, 2006	May 28, 2006	Written discovery deadline, class Certification
March 31, 2006	June 30, 2006	Written discovery responses

¹ In submitting this Motion, Bally expressly reserves and does not waive its defense that it is not subject in jurisdiction in Massachusetts with respect to the matter at issue in this case.

<u>Deadline set 08/05/05</u>	<u>Proposed new deadline</u>	<u>Event (cont.)</u>
April 15, 2006	July 14, 2006	Motion for class certification
April 30, 2006	July 31, 2006	Opposition to motion for class certification
May 15, 2006	August 15, 2006	Joint status report, mediation
May 24, 2006, 3:00	August 23, 2006	Hearing, class certification
June 30, 2006	September 29, 2006	Automatic disclosures, merits
August 31, 2006	November 30, 2006	Written discovery deadline, merits
September 30, 2006	December 29, 2006	Written discovery responses
October 31, 2006	January 31, 2007	Non-expert deposition deadline
November 30, 2006	March 2, 2007	Expert disclosures and Rule 26 expert reports
January 31, 2007	April 30, 2007	Expert deposition deadline
February 28, 2007	May 28, 2007	Dispositive motion deadline
March 31, 2007	June 29, 2007	Dispositive motion oppositions
May 23, 2007, 3:00	August 23, 2007	Final pre-trial conference
July 9, 2007	October 9, 2007	Trial

WHEREFORE, the Court should allow this Motion, issue a revised scheduling order reflecting the above dates, and grant the parties such other and further relief as it deems appropriate.

Respectfully submitted,

GISELLE RUIZ,

Plaintiff,

By her counsel,

/s/ Elizabeth Ryan

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BALLY TOTAL FITNESS HOLDING
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Defendants,

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Date: October 14, 2005